IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1653 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Petitioner(s)

Versus

VITHALDAS M VANCHANI - Respondent(s)

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Appearance :

MRS VASAVDATTA BHATT for Petitioner No(s).: 1.

MR MUKESH H RATHOD for Respondent No(s).: 1.

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CORAM : HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 01/07/2005

ORAL JUDGMENT

1.By filing this petition under Article 226 and 227 of the Constitution of India, the petitioner has prayed for quashing and setting aside the impugned award dated 25.07.1997 passed by the learned Presiding Officer,

Labour Court, Junagadh in Reference Case No. 6 of 1994.

2. It appears from the record that the respondent workman was an employee of the petitioner corporation and was working as conductor. It is the case of the petitioner that at the relevant time, when he was on duty on 10.03.1981, he was plying the bus on the route from Junagadh to Veraval and at that time, the bus was checked by the checking party near Khalilpur wherein it was found that the respondent workman had collected bus far from 12 passengers @ Rs.0.35 totalling to Rs.4.20/- without issuing the tickets to the said passengers. It is the case of the petitioner that the ticket fare collected from the said passengers had also not been entered in the way bill. It is the case of the petitioner that thereafter the departmental inquiry was held against the respondent workman in accordance with the relevant rules and regulations and upon conclusion of the said inquiry, the respondent workman was dismissed from service by order dated 21.10.1983. It appears that the respondent workman filed an appeal against the aforesaid dismissal order before the First Appellate Authority which came to be rejected. Thereafter, the industrial dispute was raised by the respondent which as numbered as Reference Case No.6 of 1994 before the Labour Court, Junagadh. The Labour

Court, after appreciating the evidence on record and hearing both the sides, passed the judgment and award dated 25.07.1997 quashing and setting aside the dismissal order dated 27.03.1984 and also passed the order to pay the back wages including all the consequential benefits. Being aggrieved and dissatisfied with judgment and award dated 25.07.1997 in Reference Case No. 6 of 1994 passed by the Labour Court, Junagadh, the petitioner has preferred the present petition under Article 226 and 227 of the Constitution of India.

3.Heard the learned advocates for the parties.

4.Ms.Vasavadatta Bhatt, learned advocate appearing for the petitioner corporation has submitted that the Labour Court has erred in holding that the conduct proved against the respondent workman did not tantamount to misconduct of misappropriation of the amount of fare received from the passengers. She submitted that the amount was collected by the respondent from 12 passengers without issuing the tickets and the same was not entered in the way bill which amounts to misappropriation of money. She submitted that earlier on 14 occasions, similar type of misconduct has been proved against the workman which has been recorded in the service book of the respondent

workman. She further submitted that no lenient view is required to be taken against the respondent workman since the misconduct is proved against the workman. She submitted that the Labour Court has not taken into consideration the past conduct of the respondent workman. It is, therefore, requested to allow the present petition.

5. On the other hand, Mr.Rathod, learned advocate appearing for the respondent workman has opposed this petition and has submitted that when the respondent workman was doing road booking, the bus was checked within the short distance and it was night time. So it was difficult to issue the tickets in darkness since the light in the bus was defective and therefore, the incident in question has occurred. He submitted that it was not the intention of the respondent workman to misappropriate the amount since the road booking was in process and, therefore, the charge of misappropriation has not been proved in any manner. It is submitted that the procedure of booking was not closed and the respondent was discharging his duty and was doing road booking and the process of issuance of tickets was going on and, therefore, it cannot be said that charge of misappropriation is made out but it can be said that the respondent workman has failed to issue the tickets

to the passengers after collecting the fare. He submitted that when the Labour Court has exercised the powers under the Industrial Disputes Act, 1947 and after appreciating the evidence on record has come to the conclusion that the charge against the workman of misappropriation was not at all established, this Court may not interfere with the judgment and order passed by the Labour Court under Article 227 of the Constitution of India. It is therefore, requested to dismiss the present petition.

6. Having heard the learned advocates for the parties and having perused the material on record, it appears that the Labour Court, while considering the matter, has come to the conclusion that after dismissal from service, the respondent workman has tried to make an attempt for work but he did not get the same. It is also recorded by the Labour Court that the petitioner corporation has not produced any evidence either documentary or oral showing that the respondent workman was gainfully employed. The Labour Court has also recorded that the misconduct has not been proved in the departmental inquiry and it would be appropriate to reinstate the respondent workman in service with back wages. Once the Labour Court has come to the conclusion that charges levelled against the respondent workman

have not been proved, the question of considering the past record of the respondent workman does not arise. It is required to be noted that the past record of the respondent workman is required to be considered only when the charge levelled against the respondent has been proved and not otherwise. Admittedly, in the present case, the Labour Court has come to the conclusion that the charge levelled against the respondent workman has not been proved. Under the circumstances, I am of the view that the Labour Court is justified in not considering the past record of the respondent workman.

7. In the facts and circumstances of the case, therefore, it cannot be said that the Labour Court has committed any jurisdictional error or material irregularity in directing the petitioner corporation to reinstate the respondent workman on his original position with continuity of service. No jurisdictional error has been committed by the Labour Court while passing the impugned award in exercise of the power under the Industrial Disputes Act, which requires interference of this Court under Article 226/227 of the Constitution of India. However, in the peculiar facts and circumstances of the case, the respondent workman is not entitled to the back wages as has been awarded by

the Labour Court.

8. In view of the aforesaid discussion, the judgment and award passed by the Labour Court dated 25.07.1997 in Reference Case No. 6 of 1994 is modified to the effect that the petitioner corporation is directed to reinstate the respondent in service without back wages with continuity of service and all consequential benefits. The petitioner corporation is directed to reinstate the respondent workman as per the judgment of this court as early as possible, preferably within a period of one month from the date of the receipt of the writ of this court, if not reinstated so far. This petition is partly allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

(SHARAD D DAVE, J)

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